

Hon.. Mary Jo Heston  
Chapter 7  
Hearing location: Telephonic  
Hearing Date: Sept. 1, 2020  
Hearing Time: 9 am  
Response Date: August 25, 2020

1 Counsel sent an email (Exhibit A) with an attachment of payment receipts (Exhibit B) which  
2 detail the date, amount, and recipient of the monthly rental payments made to Debtor's mother.  
3 Therefore the Trustee's statement that Counsel “failed and refused” to provide this information is  
4 a sworn statement made to this Court that is false. Nor did Counsel ever refuse to amend the  
5 SOFA as evidenced in the email thread that the Trustee provided as an exhibit to his declaration.  
6 That is another false statement made to this Court.

7  
8 (The cause of action is actually (a)(3) and (a)(4) of §521, [duty to cooperate and turn over  
9 requested information]. The requested information was promptly provided. There is, however,  
10 no duty under §521 to amend schedules according to a Trustee's interpretation of law nor does it  
11 empower a Trustee to set a deadline other than a reasonable time as would be determined by the  
12 Court.)

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14 Clearly, the Trustee is confusing a legal disagreement with the duty to cooperate.

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16 This monthly rent payment, in the amount of \$1843,70, is the exact amount of the  
17 attached mortgage statement (Exhibit C). The address listed on the mortgage statement, 12216  
18 NE 116th Street, Vancouver, WA 98682, is the address that the Debtor listed in her Statement of  
19 Financial Affairs, #2 (Exhibit D).

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21 As for the amendments to SOFA: First, Counsel was not aware of any immediate  
22 deadline to make this amendment if it required amending. As was the case, Counsel was looking  
23 into the Trustee's position and has yet to identify, nor has the Trustee provided as requested (see  
24 email to Trustee Garrett attached as Exhibit E). any case law that held that the contemporaneous  
25 payment of monthly residential rent, not subject to a lease, to be a preferential payment on debt  
26 or a payment on debt benefiting an insider as contemplated by 11 U.S.C. §547. Counsel has  
27 never “refused” to amend the SOFA if there are reasonable grounds and case law that support the

1 Trustee's contention that these payments did not fall within the exceptions of §547. Yet the  
2 Trustee repeatedly demanded an immediate response to which this Counsel rightly viewed as  
3 harassment. At issue are the exception provisions listed under subsections (c)(1) and (c)(2) of  
4 §547 providing exceptions to the Trustee's avoidance powers of preferential transfers. These  
5 exceptions involve the contemporaneous exchange of new value and/or made in the ordinary  
6 course of financial dealings. Counsel has always considered the timely monthly payment of non-  
7 leased residential rent as a contemporaneous exchange of new value and made in the ordinary  
8 course of financial affairs and therefore not payments on antecedent debt nor a payment on debt  
9 benefiting an insider. As Exhibit A shows, the monthly payments were listed as "house" and the  
10 recipient was her mother Wendy Stephens. Debtor resided at the property at the time of the  
11 payment and payment was made to the mother and not to the mortgage creditor. Therefore  
12 neither paragraph #7 nor #8 apply in the sense that Debtor's other creditors would have received  
13 a benefit had the payments not been made under (b)(5)(B) provision of §547.

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15 Second, these payments were not gifts nor improper payments impairing the estate as the  
16 Trustee argues and yet provides no evidence. To suggest otherwise would entail a broad and  
17 sweeping change to bankruptcy law and would have significant consequences to the vast number  
18 of young adults who reside with their parents or others who pay rent to a friend or family  
19 member. **As is often the case, many trustees make immediate demands for repayment from**  
20 **the Debtor or the recipient without first establishing the prerequisite factors of §547 before**  
21 **the Court.** This is the hazard created when such rental payments are presented as payments on  
22 debt or on debt that benefits and insider. This also creates extreme anxiety and incredible stress  
23 upon both the Debtor and the recipient. Accordingly, the policy of Counsel has been to disclose  
24 such payments during oral testimony at the 341 Meeting of Creditors yet not formally  
25 characterize them as payments on debt within the bankruptcy documents. In fact, if the Court  
26 should prohibit the Trustee from making any repayment demand until such time that the  
27 prerequisite factors of §547 are established – and not subject to its exceptions -- within a motion

1 to the Court then the SOFA will be promptly amended if the Court finds that payments for rent  
2 are payments on debt.

3  
4 As is evidenced above, Counsel has promptly provided to the Trustee with the exact  
5 information he has requested, and Counsel has been reasonable and communicative in his  
6 reluctance to formally characterize these as payments made on antecedent debt or payments on  
7 debt benefiting an insider.

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9 Accordingly, Debtor and her Counsel pray the Court to deny Trustee's motion and to  
10 deny his request for sanctions. The Court may also consider just and proper remedies against the  
11 Trustee himself for providing false information to this Court, which is squarely within the scope  
12 of 'vexatious conduct'.

13  
14 Dated this 11<sup>th</sup> day of August, 2020

15  
16 /s/ Steven Lenzkes  
17 Steven R. Lenzkes, WA Bar #33836  
18 Attorney for Debtor Molly Jo Karvinen  
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